IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1172 OF 2006
IN
WRIT PETITION NO. 3328 OF 2005

GTL Limited. ... Applicant.

V/s.

Maharashtra Rajya Rashtriya
Kamgar Sangh & Another. ... Respondents.

J.P.Cama, senior counsel with A.K.Jalisatgi i/b. M/s.Kanga & Co. for the applicant.

S.M.Oak for respondent No.1.

N.V.Thatte for respondent No.2.

CORAM: V.C.DAGA, J.

DATED: 5th May 2006.

P.C.:

. By this application, the applicant/ original petitioner is seeking direction against respondent No.2- contractor to enter into a contract agreement with the applicant for its house keeping requirements by selecting and engaging such number of contract labourers and the supervisors based on the requirement of the contract, from and out of the employees earlier engaged by it as on 31st March, 2006 at its premises; viz. ES-IV, Mahape, Navi Mumbai.

2. In the alternative, the applicant/

petitioner is seeking discharge from the obligation arising out of the consent order dated 29th November, 2005 passed in the substantive Writ Petition No.3328 of 2005.

3. Mr.Cama, learned senior counsel appearing for the applicant submits that the consent minutes of order did not contemplate that respondent No.2 can engage all workmen (31 in number) involved in Reference (IT) No.15 of 2004. According to him, consent minutes of order stipulate that applicant shall give a contract to respondent No.2 for its house keeping requirements; quantifying the required number of workers; and that respondent No.2 shall engage them on contract basis only from and out of the contract labourers; who were engaged by it as on 31st March, 2005. He, thus, submits that respondent No.2 cannot insist upon the applicant that it should be allowed to engage all the persons involved in Reference (IT) No.15/2004.

4. Mr.Cama, thus, submits that respondent No.2 is avoiding to enter into a contract and insisting upon the applicant that it should be allowed to engage all the persons involved in the reference proceeding.

5. Mr.Cama submits that insistence on the part of respondent No.2- contractor is nothing but an attempt to refuse to discharge obligations flowing from the consent minutes of order dated 29th November, 2005. He, thus, prayed for allowing application in terms of prayer clauses (a) or in alternative in terms of prayer clause (b) thereof.

6. Per contra, Mr.Oak, learned counsel for respondent No.1- Union strongly opposed the present application and the prayers made therein contending that the application is malafide.

7. Mr.Oak submits that the application under consideration is nothing but a counter blast to the application made by the Union in the reference proceeding; wherein the Union has alleged that the employer has offered contract conditionally; providing employment to 14 workmen only; on the alleged contention that no full work is available.

8. According to Mr.Oak, the contention of the petitioner- employer is absolutely baseless and is made only with a view to evade the engagement of

all 31 workmen involved in the reference proceeding.

9. According to Mr.Oak, full work is available. The area of operation with the petitioner has been increased in one or the other form. He submits that since about 2003 onward the estimated work in house keeping and other departments has been increasing by leaps and bound. He tried to rely upon the Contract Labour Licences brought on record of the Industrial Tribunal. He, thus, prayed for rejection of the application with costs.

10. Having heard the rival parties; having examined the consent minutes of order dated 29th November, 2005, it nowhere specifies or restricts employment of specified the number of workers to be engaged by respondent No.2- contractor. The terms of contract dated 31st March, 2006, vide clause 3(c), gives liberty and discretion to the contractor to decide number of workmen required for completion of the work. Under the contract it is discretion of the contractor; who is supposed to engage workers from and out of the employees earlier engaged by it as on 31st March, 2006. No

discretion in this behalf lies with the employer. The use of the term "from and out of" is with a view; not to permit contractor to engage employees, other than involved in the reference proceeding. No discretion is given to the employer under the consent minutes of order dated 29th November, 2005.

11. In the above view of the term of the contract dated 31st March, 2006, the contention canvassed by Mr.Cama on behalf of the petitioner that it is a right of the employer to stipulate the number of workmen required to be engaged by the contractor is unsustainable. The clause similar to clause 3(c) referred to above is also to be found in the contract which was entered or was to be entered into between the petitioner with M/s.Sankalp Siddhi Utility Services (Contractor) on 1st April, 2005. In the circumstances, the application and the prayers made therein are devoid of any substance. The applicant/ petitioner is not entitled to seek direction as prayed either in the prayer clauses (a) or (b) for the reasons recorded herein.

12. In the result, civil application is

rejected with no order as to costs.

(V.C.DAGA, J.)